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ALEXANDER L. STEVAS

No. 82-583

In the Supreme Court of the United States

OCTOBER TERM, 1982

KALMAN R. HETTLEMAN, ET AL., PETITIONERS

v.

JOHN R. BLOCK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Secretary of Agriculture had authority under the Food Stamp Act of 1964, 7 U.S.C. 2011 *et seq.*, to impose strict liability on states for the loss of food stamps due to theft.

PARTIES TO THE PROCEEDING

The petitioners are Kalman R. Hettleman, Secretary, Maryland Department of Human Resources, and Richard W. Bateman, Director, Maryland Social Security Administration. The original defendants, in addition to the Secretary of Agriculture, were Carol T. Foreman, Assistant Secretary; Nancy Snyder, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture; Ray Pugh, Deputy Administrator for Financial Management, United States Department of Agriculture; and Ralph Picone, Regional Director, Food Stamp Program, Mid-Atlantic Region, United States Department of Agriculture.

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OPINIONS BELOW

The initial opinion and order of the district court (Pet. App. 1a-13a) is reported at 480 F. Supp. 782. The initial opinion of the court of appeals (Pet. App. 17a-25a) is reported at 642 F.2d 63. The district court opinion on remand (Pet. App. 26a-38a) is not reported. The opinion of the court of appeals affirming that decision (Pet. App. 40a-41a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 1982. The petition for a writ of certiorari was filed on October 4, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Food Stamp Act of 1964, 7 U.S.C. 2011 *et seq.* (the "Act"), established a cooperative federal-state grant program in which the State of Maryland voluntarily chose to participate (Pet. App. 18a).[1] The Act authorizes the Food and Nutrition Service ("FNS") of the United States Department of Agriculture ("USDA") to issue food stamps to needy families through participating state agencies (Pet. App. 18a). The food stamps are obligations of the United States, redeemable at face value by the United States Treasury. 7 U.S.C. (& Supp. V) 2013, 2033(a). Under the Act, states are responsible for the certification of applicant households and for the issuance of coupons (7 U.S.C. 2019(b)) and are eligible to receive matching funds for such administrative costs from the USDA (7 U.S.C. 2024(b)) through a letter of credit (7 C.F.R. 275.1(b) and (c)).

2. In 1971 the Secretary of Agriculture adopted 7 C.F.R. 271.7(b), imposing strict liability on states for the loss of food stamps due to theft (Pet. App. 20a).[2] When the proposed regulations were published for public comment, Maryland criticized Section 271.7(b) on the ground that a state should not be liable for lost stamps in the absence of a showing of negligence (Pet. App. 31a).[3] It is thus clear that Maryland understood that Section 271.7(b) as promulgated imposed strict liability for lost stamps, and nevertheless elected to continue its participation in the program.

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[1]The Food Stamp Act of 1964 was amended several times after its enactment and was finally superseded by the Food Stamp Act of 1977, 7 U.S.C. (Supp. V) 2011 *et seq.* (Pet. App. 2a).

[2]This provision was intended to clarify an earlier regulation that had been challenged successfully on the ground that it did not unambiguously impose strict liability (Pet. App. 20a).

[3]Maryland did not suggest that the proposed regulation exceeded the Secretary's authority under the statute.

Five years later, in 1976, food stamps worth $113,962 were stolen from four Maryland distribution centers (Pet. App. 4a-5a).[4] After each loss was reported, USDA notified Maryland that under food stamp program regulations, Maryland was obligated to reimburse FNS for the face value of the stolen food stamps (*id.* at 26a). After Maryland refused to pay (*id.* at 20a), USDA offset the amount due against Maryland's 1978 letter of credit (*id.* at 5a).[5]

3. Petitioners challenged the offset on three grounds. They argued that: (1) the imposition of a strict liability standard exceeded the Secretary's rulemaking authority under the Act; (2) the Secretary had failed to comply with the requirements of the Administrative Procedure Act, 5 U.S.C. 552, in promulgating 7 C.F.R. 271.7(b); and (3) the Secretary lacked statutory authority to utilize an offset to collect the debt (Pet. App. 5a-6a).

The district court initially held that the Secretary lacked statutory authority to impose the strict liability standard (Pet. App. 6a). The court of appeals, holding the contested regulation to be a valid and reasonable exercise of the Secretary's authority to administer the Act effectively (*id.* at 24a), reversed and remanded the case for a determination on the remaining issues (*id.* at 24a).

On remand, the district court granted summary judgment for the Secretary (Pet. App. 38a), and the court of appeals affirmed on the basis of the district court's opinion (*id.* at 41a). Petitioners now seek certiorari only on the question of

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[4]Maryland received more than $86 million in food stamps in Fiscal Year 1976.

[5]The amount stolen from one distribution center, $7,818, is no longer at issue, so the remaining sum in dispute is $106,164 (Pet. App. 5a).

the Secretary's authority to promulgate the challenged regulation under the Act (Pet. 4-5).[6]

ARGUMENT

1. Petitioners contend (Pet. 5) that this case presents an important issue related to *Pennhurst State School* v. *Halderman*, 451 U.S. 1 (1981). In *Pennhurst*, the Third Circuit held, *inter alia*, that the Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C. 6000 *et seq.*, imposed affirmative obligations on a state to fund certain services as a condition of the receipt of federal funds. 612 F.2d 84, 97 (1979). This Court, however, determined that the specific statutory language and legislative history relied on by the court of appeals was ambiguous. 451 U.S. at 19. It concluded, therefore, that "Congress fell well short of providing clear notice to the States that they, by accepting funds under the Act, would indeed be obligated to" undertake additional affirmative financial obligations. *Id.* at 25.

The present case, by contrast, involves no attempt to impose unanticipated financial obligations on a state that has received a grant (cf. 451 U.S. at 17-18), and thus is not inconsistent with *Pennhurst*. *Pennhurst* cannot reasonably be read to require that every detail of the administrative enforcement of a federal grant program be spelled out in the statute itself. Such an extension of *Pennhurst* would impede the ability of Congress to delegate authority to administrative agencies and would seriously impair the flexibility necessary for agencies to enforce the legislation committed

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[6]Petitioner's assertion (Pet. 4) that the offset denied them "due process protection in the form of any sort of hearing * * * [or] judicial determination that the State owed the monies" adds nothing to their claim. If the regulation validly imposes absolute liability for lost stamps, there are no disputed issues for resolution through hearings or judicial proceedings, since neither the fact nor size of the thefts is disputed (Pet. 4).

to them. See, *e.g.*, *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, 398 (1940); K. Davis, *Administrative Law Treatise* § 2.05 (2d ed. 1979).

Nothing in *Pennhurst* suggests a retreat from the settled principle that an administrative regulation promulgated pursuant to a congressional delegation of authority will be sustained so long as it is "reasonably related to the purposes of the enabling legislation." *Mourning* v. *Family Publication Service, Inc.*, 411 U.S. 356, 369 (1973), quoting *Thorpe* v. *Housing Authority*, 393 U.S. 268, 280-281 (1969). Accordingly, the question posed by the present action is simply whether 7 C.F.R. 271.7(b) is reasonably related to the 1964 Act. That is not a question that warrants consideration by this Court. The court of appeals' decision is consistent with the only other appellate ruling on the question. *Missouri ex rel. Freeman* v. *Block*, 690 F. 2d 139 (8th Cir. 1982). Moreover, as petitioners recognize (Pet. 9 n.5), the current Food Stamp Act authorizes the strict liability imposed by 7 C.F.R. 271.7(b), so the question is of no continuing importance. See 7 U.S.C. (Supp. V) 2022(a).

In any event, the regulation is clearly valid. This Court noted in *Knebel* v. *Hein*, 429 U.S. 288, 293 (1977), that 7 U.S.C. 2013(c) is a particularly broad delegation of rulemaking authority to the Secretary.[7] In reliance on *Knebel*, the court of appeals determined that the provision was sufficiently broad to authorize a regulation imposing strict liability (Pet. App. 22a). The court of appeals reasoned that 7 C.F.R. 271.7(b) "provides an efficient mechanism for allocating loss [and] places responsibility for loss with the custodian of the coupons (who is most able to guard against

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[7] 7 U.S.C. 2013(c) provides that the Secretary "shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program."

loss)" (Pet. App. 22a).[8] Finally, unlike the states in *Pennhurst*, which were unable to make an informed choice about the desirability of accepting the federal grants due to the ambiguity of the legislation, Maryland demonstrated its understanding of the effect of the challenged regulation on its obligations under the Food Stamp Act in the course of its participation in the 1971 rulemaking (Pet. App. 31a).[9]

2. Petitioners further argue (Pet. 10) that the decision below conflicts with the Third Circuit's decision in *New Jersey* v. *Hufstedler*, 662 F.2d 208 (1981), cert. granted *sub nom. Bell* v. *New Jersey*, No. 81-2125 (Oct. 4, 1982).[10] But that case concerns the authority of a federal agency to order repayment of funds spent in a way inconsistent with the terms of a federal grant. Although, for the reasons explained in our filings in No. 81-2125, we believe that the Third Circuit read this Court's *Pennhurst* decision too broadly, nothing in the Third Circuit's decision suggests that it would agree with petitioners' argument that the Secretary was without power to promulgate regulations establishing such administrative details as the burden of

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[8]See also *Missouri ex rel. Freeman* v. *Block*, *supra*, 690 F. 2d at 142-143.

[9]Contrary to the original suggestion of the district court (Pet. App. 8a; Pet. 8), it is highly unlikely that a state would consider withdrawing from the food stamp program because of concern for the extent of its potential liability for lost or stolen stamps.

[10]Petitioners state (Pet. 11) that the federal government agrees that there is a conflict "on this issue" between the Third and Fourth Circuits. There is a conflict between the two circuits on the issue involved in No. 81-2125, in light of the Fourth Circuit's decision in *West Virginia* v. *Secretary of Education*, 667 F.2d 417 (1981); for the reasons explained in the text, that conflict has nothing to do with the issue of the validity of 7 C.F.R. 271.7(b).

responsibility for lost or stolen food stamps.[11] See *Missouri ex rel. Freeman* v. *Block, supra,* 690 F.2d at 142; *State* v. *Bergland,* No. 79-388-A (M.D. La. Jan. 29, 1982). Indeed, in the court of appeals petitioners distinguished the Fourth Circuit's decision in *West Virginia* v. *Secretary of Education,* 667 F.2d 417 (1981) (Ct. App. Br. 10 n.7), which, in a filing in this Court (81-2125 Md. Am. Br. 4), they agree presents the same issue as *Bell* v. *New Jersey, supra.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[11] Moreover, the Food Stamp Act of 1977 expressly authorizes administrative recoupment after an administrative finding of liability (7 U.S.C. (Supp. V) 2022(a)), so any possible inter-circuit conflict about the interpretation of the 1964 Act is of no continuing importance.

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